

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 11438 of 2004

Between:

A.Devendrudu, S/o Munaswamy Naidu, Hindu, aged about 40 years,
cultivation, R/o Salamma Quarters, Perumal Koil Street, Nagari Town & Mandal,
Chittoor District

..... PETITIONER

AND

- 1 The Mandal Revenue Officer, Nagari Mandal, Nagari, Chittoor District.
- 2 The Panchayat Secretary, O.G.Kuppam Gram Panchayat,
Nagari Mandal, Chittoor District

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in demolishing the foundation stones on the south west corner of the basement raised by the petitioner bearing H.No.4-39 of K.G.Kuppam village, O.K.Kuppam Gram Panchayat, Nagari Mandal, Chittoor District to an extent of 22 feet East to West foundation and 28 feet of South to North out of the total extent of the foundation of 64 feet East to West and 105 feet South to North high handedly on 05-07-2004 at 6-30 P.M. to 8-00 P.M. on the ground that the respondents are laying a road ad illegal, unjust, arbitrary, high handed, without notice, without enquiry without jurisdiction and against Article 300-A of the Constitution of India and consequently direct the respondents to restore the foundation demolished on 05-07-2004 to an extent of 22 feet East to West foundation and 28 feet of South to North out of the total extent of the foundation of 64 feet East to West and 105 feet South to North made in house site bearing No.4-39, of K.G.Kuppam Village, O.K.Kuppam Gram Panchayat, Nagari Mandal, Chittoor District at their cost

Counsel for the Petitioner:M/s.L.J.VEERA REDDY.

For Respondent No. 1: Government Pleader for Revenue (General).

Counsel for the Respondent No.2.: MR.DANTU.SRINIVAS.

The Court made the following :

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 11438 of 2004

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Oral order:

Assailing the action of the respondents in demolishing the foundation raised by the petitioner in vacant site bearing Door No.4-39 situated in Nagari Town and Mandal, Chittoor District, as illegal and arbitrary, the petitioner filed this writ petition.

The petitioner states that his father purchased the aforementioned site, admeasuring 16 yards from East to West and 20 yards from South to North, under a registered sale deed dated

1-5-1961 from its vendor. After the death of his father, the petitioner states that he and his brother purchased small extents of land adjoining their house, and also received some property under a will, executed by his paternal uncle. While they were in possession and enjoyment of the said property, when one Mr. Anki Reddy and

Mr. Hemadri, tried to interfere with their possession, the petitioner states that they filed suit O.S. No. 102 of 1994 on the file of the District Munsif, Nagari, which on contest by the defendants therein, was decreed in their favour by orders dated 31-7-2000. While the matters stood thus, the petitioner states that after demolishing the old and dilapidated walls of his house, when he raised foundation for constructing new walls, the petitioner states that the respondents at the instance of third parties, who are inimical to him and against whom he filed criminal cases, demolished the foundation raised by the petitioner and interfered with his peaceful possession on 5-7-2004, without issuing any notice, with a view to lay a road. This action of the respondents is challenged by the petitioner in this writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

The learned counsel for the petitioner submits that the action of the respondents in demolishing the foundation raised by the petitioner at the instance of third parties,

who are inimical to him and against whom he filed cases, for the purpose of laying a road, without issuing any notice to the petitioner and without conducting any enquiry and without paying any compensation, is arbitrary and illegal. He thus prayed for appropriate directions.

On behalf of the respondents, respondent No.1 filed counter. The learned Government Pleader for Revenue reiterating the counter averments submitted that the land in an extent of Ac.4-56 cents situated in Sy. No. 42 of Kuppam village, is classified as K.G. Kuppam Gramanatham Poramboke as per the village O.G. Kuppam revenue records. He submits that by the side of the house of the petitioner, a road runs from Nagari to K.G. Kuppam Harijanwada and Adi Andhrawada, which is used by the villagers and people of scheduled caste community for transporting their agricultural produce to the Taluk Headquarters, and the petitioner and his brother, encroached the road which is in existence since time immemorial, and after closing it, raised foundation. Due to closure of road by the petitioner, the villagers of K.G. Kuppam and O.G. Kuppam suffered, and pursuant to complaints received from the villagers, the Gram Panchayat, O.G. Kuppam, passed an unanimous resolution on 25-6-2004, for clearing the encroachment made by the petitioner.

The learned Government Pleader for Revenue further submits that in pursuance of the resolution passed by the Gram Panchayat, a notice dated 26-6-2004 under Section 7 of the Land Encroachment Act, 1905 (for short 'the Act') was issued by respondent No.1, and as the petitioner was not residing in the village, it was affixed at the site. As the petitioner failed to remove the encroachment, respondent No.1 gave a final notice under Section 6 of the Act, once again calling upon the petitioner to remove the encroachment. When the petitioner, in spite of receiving the notices, failed to remove the encroachments, respondent No.1 on 5-7-2004 removed the encroachment and took possession of the road under a panchanama. The petitioner suppressing all these material facts, filed the present writ petition.

He submitted that the petitioner raised foundation on the road belonging to the Gram Panchayat, and having regard to the complaints received from the villagers, the Gram Panchayat passed a resolution for removal of the encroachments, and in pursuance thereof, respondents issued notices to the petitioner under the Act, and as the petitioner neither submitted his explanation nor removed the encroachments even after receiving the notices, the respondents

demolished the foundation raised by the petitioner, and no exception can be taken thereto. He, thus submitted that the writ petition be dismissed.

The contention of the petitioner that the respondents without issuing any notice and without conducting any enquiry and without paying any compensation, at the instance of third parties, who are inimical to him and against whom he had filed cases, had demolished the foundation raised by him, for the purpose of laying a road, appears to be incorrect, and cannot be accepted.

A reading of the counter filed by the respondents would make it clear that the land in which the petitioner raised the foundation, is classified in the village records as Gramanatham Poramboke, and that a road from Nagari to K.G. Kuppam Harijanwada and Adi Andhrawada, runs by the side of the house of the petitioner, and the petitioner having blocked the road, raised the foundation. As the blockage of road caused much inconvenience to the villagers in general and the scheduled caste persons in particular, who use the said road for transporting the agricultural produce to Nagari Town, they lodged a complaint to the Gram Panchayat against the petitioner, and the Gram Panchayat acting on the said complaint, passed an unanimous resolution on 25-6-2004 for removal of the encroachments, and rightly so.

Though the petitioner contends that no notice whatsoever was issued before demolishing the foundation raised by him, it may be noticed that it is the specific case of the respondents that pursuant to the aforesaid resolution passed by the Gram Panchayat, the respondents issued two notices to the petitioner – one under Section 7 of the Act on 26-6-2004 and the other under Section 6 of the Act on 30-6-2004, calling upon the petitioner to remove the encroachment within three days. Inasmuch as the petitioner, in spite of receiving the said notices, failed to submit his explanation nor removed the encroachments, the respondents on 5-7-2004 removed the encroachment made by the petitioner on the road, which it is stated, is used by the villagers for transporting the agricultural produce, and took possession thereof under a cover of panchanama, and no exception can be taken thereto. If the land in which the petitioner raised foundation, in fact, belonged to him, he having acquired the same by way of purchase from his vendors, and also under a will, as is contended by him in the writ affidavit, nothing prevented the petitioner from bringing the same to the notice of the respondents when they sought to demolish the foundation raised by him by issuing notices, but the petitioner did not do so, and

instead, having received the notices, kept quiet till the respondents demolished the foundation on 5-7-2004, without submitting his reply. Inasmuch as the petitioner failed to submit his explanations to the notices, it gave an impression to the respondents, and in fact, is revealed from the village revenue records, that the land in which the petitioner raised the foundation, formed part of a road and belonged to the Gram Panchayat. Since the land in which the petitioner raised the foundation, is itself a road belonging to the Gram Panchayat, the respondents having issued notices to the petitioner, and upon following the due process of law, demolished the foundation raised by the petitioner, and fault can be found with the action of the respondents in demolishing the foundation raised by the petitioner in the land belonging to the Gram Panchayat. The petitioner having encroached the road belonging to the Gram Panchayat, cannot expect the Gram Panchayat to pay him any compensation for demolishing the foundation nor can he expect initiation of any land acquisition proceedings, for reclaiming their own land or road from the encroachers, nor can the petitioner contend that the respondents have acted at the instance of third parties, who are inimical to him and against whom he filed cases, and more so when a duty is cast upon the respondents to protect their land from encroachments.

In the result, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: July 26, 2004.

KSR

To

- 1 The Mandal Revenue Officer, Nagari Mandal, Nagari, Chittoor District.
- 2 The Panchayat Secretary, O.G.Kuppam Gram Panchayat,
Nagari Mandal, Chittoor District.
3. Two CCs for Government Pleader for Revenue(General), A.P.High Court
Buildings, Hyderabad.(OUT)
4. Two CD copies.

CT by Dvs.